the law. The wrongful killing of a human being is a tort within the jurisdiction of the state governments. Statutes passed by them giving to the administrator or executor of the deceased a right of action for such tort, are applicable when the killing takes place upon navigable waters within the territorial limits of the states respectively. On the principle that, as to matters within the jurisdiction of a state, its laws, unless superseded by federal statutes, follow and are in force upon vessels of the state upon the high seas, such statutes also give the executor or administrator a right of action when the killing takes place upon the high seas. The tort being maritime, the right of action will be enforced in a court of admiralty of the United States, whenever the killing is upon a navigable water.

ADELBERT HAMILTON.

Supreme Court of Indiana.

BUNNELL *v.* HAYS ET AL.

A householder is one upon whom rests the duty of supporting the members of his family or household.

A widower is a householder within the meaning of the exemption laws, although all his children have arrived at full age and have left his domicile, leaving him, so far as wife, children or kinsmen are concerned, living alone.

Where a man has, at the death of his wife, only an adopted child, and he employs a family to keep house for him, he furnishing the greater part of the furniture and nearly all the fuel, and paying the family so much per week; and the family supplying the food, caring for his room and doing his washing, such an one is a householder within the meaning of the exemption laws.

THE facts were as follows:—Bunnell, the appellant, who was the owner of the personal property involved, became a resident of White county, Indiana, in December 1877, and continuously resided there until the trial of this action. His family, at the time he became a resident of said county, consisted of his wife and an adopted child. In March 1878, appellant's wife died; thereafter appellant employed a family to keep house for him, he providing the house, the greater part of the furniture and nearly all the fuel, and paying the person who kept house for him, in addition the sum of $1.20 per week. The person or persons who kept house for him supplied the food, cared for appellant's room and did his washing. An execution was issued against appellant on the 26th day of November 1878, and on the 6th day of December of the same year, was levied on the personal property in controversy. At the time the levy was made, the child was living with appellant, but at the time of the trial, was on a visit to its natural mother. Prior to the levy of the execution, appellant claimed his right to

hold the property as exempt from execution, and executed and tendered the proper schedule. The value of the property was less than three hundred dollars.

The opinion of the court was delivered by

ELLIOTT, J.—The question is: Was the appellant a householder, and entitled to have the property in controversy exempt from levy and sale upon execution?

As we gather from the record and brief of the appellant—there is none from the appellee—the claim of the appellant to hold the property as exempt from execution was denied, upon the ground that he was not a resident householder within the meaning of the law. The conclusion of the court below was erroneous. The appellant, during the life of his wife was, beyond all possibility of respectable controversy, a resident householder, and the death of his wife did not deprive him of that character, nor of the legal rights belonging to it. No one, we think we dare say, would seriously contend that a man ceased to be a householder the instant his wife died, and yet, if her death determines his rights to be considered a householder, that effect attaches without an instant's delay. The child, although an adopted one, was dependent upon the appellant for support. The appellant's home was that of the child, and the absence of the latter on a visit to its natural mother, did not change its domicile: *Guffin* v. *Sutherland*, 14 Barb. 456; *Ward* v. *Jones*, 20 Mo. 75; *Norman* v. *Bellman*, 16 Ind. 156. It was the duty of the appellant to support the child, which was his by adoption, and the case, therefore, falls within the rule sanctioned by many authorities, that he is to be deemed a householder upon whom rests the duty of supporting the members of his family or household: Thompson's Homestead and Exemptions, sects. 54, 46; Smith on Homestead and Exemption, sect. 532.

The fact that appellant secured the services of others to prepare and furnish food, and to take care of his furniture and rooms, did not take from him the character of householder. The employment of the persons for the purpose mentioned, were not, in effect, different from the hiring of servants, and paying them daily or weekly wages. In *Graham* v. *Crockett*, 18 Ind. 119, it was held that where "a man and his sister live together, both owning some personal property, and contributing toward their household expenses, and the brother appeared to direct affairs, he was a resi-

dent householder within the meaning of the act exempting property from seizure upon execution." In *Brown* v. *Stratton*, 8 Cent. L. J. 46, Brown leased the premises, retaining one room, the tenant furnishing and preparing the food, and it was held that Brown was to be regarded as a householder. In many cases it has been held, that a widower is to be regarded as a householder, although all his children may have arrived at full age and have left his domicile, leaving him, so far as wife, children or kinsmen are concerned, living alone: *Kimbue* v. *Willis*, 12 Cent. L. J. 211; *Lilloway* v. *Brown*, 12 Allen 84; *Whalen* v. *Cadman*, 11 Iowa 226; *Meyers* v. *Ford*, 22 Wis. 139; *Barney* v. *Leeds*, 51 N. H. 253; *Blackwell* v. *Broughton*, 56 Geo. 392.

Judgment reversed at the cost of the appellees.

The law of exemption of property from sale upon an execution, is for the protection of the defendant debtor, and to enable him to enjoy the necessary comforts of life. In view of the object of such humane provision, the statute itself and the mode of carrying it into effect is to be liberally construed: *Gregory* v. *Latchem*, 53 Ind. 449; "the statute should have a liberal construction to accomplish the object of the law:" *Buxton* v. *Dearborn*, 46 N. H. 43. If the terms of the statute are ambiguous, the court "must resort, in order to ascertain their meaning, to the general spirit and intent of the enactment, keeping in view its known object and the mischief intended to be remedied:" *Wassell* v. *Tunnah*, 25 Ark. 103. These statutes are "of a humane character, and should be held to apply fairly to all such cases as are within the equity and spirit of the act; but beyond this we must not go:" *True* v. *Morrill*, 28 Vt. 674. Exemption "should be favored so far as to apply it to all such cases as are within the equity and spirit of the statute:" *Mills* v. *Grant*, 36 Vt. 271. Such statutes "are entitled to be liberally construed:" *Campbell* v. *Adair*, 45 Miss. 182. "Such construction, consistent with the spirit of the provision, should be given as would promote and secure the purpose intended:" *Franklin* v. *Coffee*, 18 Tex. 416. "It is a cardinal rule in the interpretation of such statutes, that they are to be liberally construed in order to promote the object of their enactment. They are intended to benefit the laboring classes, which make up a large part of our society, and to enable them the better to provide for those dependent upon them for support and maintenance:" *Kuntz* v. *Kinney*, 33 Wis. 510. "In view of their benevolent and humane character," they "are entitled to be liberally viewed by the courts:" *Cox* v. *Wilder*, 2 Dill. 49. "The humane policy of the Homestead Act seeks not the protection of the debtor, but its object is to protect his family from the inhumanity which would deprive its dependent member of a home. * * * And in aid of this wise and humane policy, the whole act should receive as liberal construction as can be fairly given to it:" *Sears* v. *Hanks*, 14 Ohio St. 300. The following authorities are to the same effect as the quotations above indicate: *McClary* v. *Bixby*, 36 Vt. 257; *Tillotson* v. *Millard*, 7 Minn. 519; *Roff* v. *Johnson*, 40 Geo. 555; *Noland* v. *Wickham*, 9 Ala. 169; *Cusic* v. *Douglass*, 3 Kan. 123; *Bronson* v. *Kinzie*, 1 How. 311; *Trawick* v. *Harris*, 8 Tex. 314; *Robinson* v. *Wiley*, 15 N. Y. 494; *Bevan*

v. *Hayden*, 13 Iowa 122; *Montague* v. *Richardson*, 24 Conn. 338; *Moss* v. *Warner*, 10 Cal. 296; *Connaughton* v. *Sands*, 32 Wis. 387; *Peverly* v. *Sayles*, 10 N. H. 358; *Good* v. *Fogg*, 61 Ill. 450; *Freeman* v. *Carpenter*, 10 Vt. 434; *Wilcox* v. *Hawley*, 31 N. Y. 648; *Richardson* v. *Buswell*, 10 Met. 506. Some courts taking the view that they are in derogation of the common law have construed these statutes strictly: *Rue* v. *Alter*, 5 Denio 119; *Temple* v. *Scott*, 3 Minn. 421; *Hammer* v. *Freese*, 19 Penn. St. 257; *Ward* v. *Huhn*, 16 Minn. 161; *Guillory* v. *Deville*, 21 La. Ann. 686; *Fuselier* v. *Buckner*, 28 Id. 594; *Todd* v. *Gordy*, 28 Id. 666; *Briant* v. *Lyons*, 29 Id. 65; *Crilly* v. *The Sheriff*, 25 Id. 219; *Olson* v. *Nelson*, 3 Minn. 53.

It is in view of this rule of interpretation of these statutes of exemption that, probably, the court has sought to bring the appellant within the statute. Cases will often arise in which those not householders have as much equity to the right of exemption as those who are. Tomlin defines a householder to be "the occupier of a house, a housekeeper or master of a family:" 2 Tom. Dict. 127. Wharton, "an occupier of a house; a master of a family:" Whart. Dict. 356. The statute construed by the court enacted that, by complying with certain conditions, any "resident householder" could have three hundred dollars worth of his property set-off as exempt from execution. Similar terms are found in all exemption statutes, such as "householder, or head of a family," "head of a family," "every householder being the head of a family," "every debtor who is the head of a family," "every householder having a family," "*bona fide* housekeeper with a family," "to every family," "of every housekeeper," &c. Having a wife is having a family: *Kitchell* v. *Burgwin*, 21 Ill. 40; *Cox* v. *Stafford*, 14 How. Pr. 521. As to what constitutes a family, see *Wilson* v. *Cochran*, 31 Tex. 680. In Louisiana, a wife, although she may have to contribute to the support of the family, is not "the debtor having a family," or "mother" "dependent upon him for support:" *Fuselier* v. *Buckner*, 28 La. Ann. 594. To constitute a *family* within the meaning of the statute, there must be a condition of dependence and not a mere aggregation of individuals: *Sallee* v. *Waters*, 17 Ala. 488; *Allen* v. *Manrasse*, 4 Id. 554. Such is the case of a single woman supporting an infant son: *Cantrell* v. *Conner*, 51 How. Pr. 45; see also *Ex parte Brien*, 2 Tenn. Ch. 33. And a single man, who has no one living with him except servants and employees, is not the head of a family: *Garaty* v. *DuBose*, 5 S. C. 498; *Calhoun* v. *MacLendon*, 42 Geo. 406; and going to the full length of the statute, it was held that an unmarried person who had adopted a child, and maintained servants and a household, was not the head of a family: *In the Matter of Lambson*, 2 Hughes (S. C.) 233.

But the question of actual dependence is not essential, as the majority of the cases hold, to constitute a family. As where a widowed mother, the daughter of several children, resided with her father in his house, ate at the same table with him and with her children, yet cultivated certain portions of his land, she was held to be the "head of a family:" *Bachman* v. *Crawford*, 3 Humph. 213; *Pollard* v. *Thomason*, 5 Id. 56; *Brigham* v. *Bush*, 33 Barb. 596. In Kentucky, it has been held that a practising physician, a widower with two young daughters, whom he kept in the care of his mother, providing for them, while he occupied a single room, one mile distant, as an office and dwelling, without servants or other family than such children, who were sometimes at his office, where he lodged and cooked and ate his meals, was a *housekeeper with a family residing with him*: *Seaton* v. *Marshall*, 6 Bush 429, but, of course, a housekeeper *who had no* family could not

claim exemption under such a statute: *Gunn* v. *Gudehus*, 15 B. Mon. 452. An unmarried man whose indigent mother and sister lives with him and are supported by him, is "the head of a family:" *Marsh* v. *Lazenby*, 41 Geo. 153; *Cannaughton* v. *Sands*, 32 Wis. 387; so such an one supporting his widowed daughter and her child: *Blackwell* v. *Broughton*, 56 Geo. 390; or a widower and his grown up daughter: *Cox* v. *Stafford*, 14 How. Pr. 521; or a minor child: *Barney* v. *Leeds*, 51 N. H. 253; or a bachelor for whom his sister keeps house: *Bailey* v. *Comings*, 16 Nat. Bank Reg. 382.

The head of a family may be one who supports his dependent minor brothers and sisters: *Greenwood* v. *Maddox*, 27 Ark. 658. This case is, in a measure, opposed by *McMurray* v. *Shuck*, 6 Bush 111. So the head of a family is one who supports his widowed sister, either with or without children: *Wade* v. *Jones*, 20 Mo. 75. So is a widower without children, living in his own house with his widowed mother: *Parsons* v. *Livingston*, 11 Iowa 104. But where a single man moved on to a farm, taking with him his brother and such brother's wife, and the two brothers worked the farm on shares, such single man is not the head of the family, although he furnish the necessaries for housekeeping and had general control of the establishment: *Whalen* v. *Cadman*, 11 Iowa 226. The court said: "The married brother and wife, in no proper sense, belonged to the family of the plaintiff. He had no control over them except such as resulted purely and exclusively from contract. He had no right to exact obedience from them or direct their movements, except so far as their agreement bound them to take care of the house. One brother was as much interested in the profits of the farm as the other. If the plaintiff was the head of this family, then the married one could not be, and this will scarcely be claimed." In Massachusetts, it was held that a woman who was never married, although she live on the property with her mother, was not a householder having a family: *Woodworth* v. *Comstock*, 10 Allen 425. But in another case it was held, a householder does not lose the right of homestead by death of his wife and departure of his children who have arrived at maturity: *Silloway* v. *Brown*, 12 Allen 34; or by divorce: *Doyle* v. *Coburn*, 6 Id. 71; *contra*: *Revalk* v. *Krœmer*, 8 Cal. 72. In California, an unmarried woman who has the care of her child, a minor, although such child is a bastard, is the head of the family: *Ellis* v. *White*, 47 Cal. 75. But in Georgia, a wife who has no children of her own, is not the head of a family of the children of her husband by a former marriage: *Lathrop* v. *Loan Assoc.*, 45 Ga. 483. Where the husband abandons the family, the wife becomes the head of the family: *Wright* v. *Hayes*, 10 Tex. 130. Property that had been owned by the husband, who died, leaving his widow and child surviving him, was set apart by statute for the support of the family; the widow married a second time, but supported her child. It was held that she could claim such property as exempt, she being a householder within the meaning of the statute: *Brigham* v. *Bush*, 33 Barb. 596. And where a married woman resides with her husband upon her own separate estate, she is entitled to exemption under a statute, according a homestead to each "citizen of the state, male or female, being a householder and having a family:" *Partee* v. *Stewart*, 50 Miss. 717. But an adult person residing with his stepmother, the latter owning the farm and farm-house, and having a large family, he transacting her business, is not a householder, since the stepmother and not the stepson is the head of the family: *Bowne* v. *Witt*, 19 Wend. 475; *Griffin* v. *Sutherland*, 14 Barb. 456.

So where one rents a house in which he lives and takes boarders, though he

has no family, yet he is a householder: *Hutchinson* v. *Chamberlin*, 11 N. Y. Leg. Obs. 248; *Brown* v. *Brown*, 68 Mo. 388. And the fact that a woman keeps a house of ill-fame, does not prevent her from being considered a householder within the meaning of the exemption law: *Bowman* v. *Quackenboss*, 3 Code R. 17.

If a person possesses the character of a householder, he does not lose it by moving with his property from one house to another, several miles distant: *Mark* v. *Bowless*, 15 Ind. 98; *Woodward* v. *Murray*, 18 Johns. 400; *Davis* v. *Allen*, 11 Ala. 164. Or by a temporary abandonment of housekeeping and storing of furniture: *Griffin* v. *Sutherland*, 14 Barb. 458; *Cantrell* v. *Connor*, 51 How. Pr. 45; s. c. 6 Daly 224. From the above cases, it will be seen that the term householder is synonymous with "head of the family," "master or chief of a family," or "one who keeps house with his family." In fact, the last clause is the definition given by Bouvier: 1 Bouv. Dict. 673. The cases that have been cited are then nearly all expositions of the term householder, and illustrate it in the many phrases that human life and families may assume. It only remains to examine the word as applied to certain other statutes of a different purport.

Under the Texas statute that says a juror must be a freeholder or a householder, one who "rents a room and boards," is a householder. It does not appear whether the juror had a family or not: *Robleo* v. *State*, 5 Tex. App. (Cr.) 346.

In Oregon, an unmarried man who keeps a house and employs domestic servants, is a householder within a law calling for a petition by householders for the establishment of a road: *Karner* v. *Clatsop Co.*, 6 Ore. 238. But in Alabama, where a person rented a "room by the year, and occupied it as a lodging-room, and exercised exclusive control of said room, and had occupied it then for more than a year," the court held he was not a householder, saying: "Householder, in our statute, means something more than the mere occupant of a room or house. It implies in its terms the idea of a domestic establishment—of the management of a household." The words of the statute were that he should be a "resident householder or freeholder:" *Aaron* (*a slave*) v. *The State*, 37 Ala. 106. One who rents and occupies a portion of a building as an office for business purposes, has been held a householder for the purposes of bail, evidently upon the theory that the intent of the statute was to secure permanency of abode in the state, and that that end was attained as much by securing one who was permanently engaged in business, upon a lease of a place of business, as by obtaining one who rented a dwelling and resided there with his family: *Somerset Savings Bank* v. *Huyck*, 33 How. Pr. 323. See also *Hemming* v. *Plenty*, 1 Moore 529; *Savage* v. *Hall*, 1 Bing. 430; *contra* · *Walker's Bail*, 1 Chit. 316. Proceeding upon the same theory, in cases of bail, the court held that where a sudden death in the family of the out-going tenant prevented the bail from obtaining possession of the house of which he had become tenant, and respecting which he claimed to be entitled to the character of housekeeper, was not in fact a housekeeper: *Bald's Bail*, 1 Chit. 288. Where one occupied every room in the house of which he claimed his right to be considered a housekeeper, with the exception of one apartment, which was reserved by the landlord for his own accommodation, on the condition of his paying all the taxes, it was held such person was not a householder: *Bald's Bail*, 1 Chit. 502.

For the distinction between householder and housekeeper, see *King* v. *Hall*, 2 D. & R. 241; s. c. 1 B. & Cr 123. See also *King* v. *Poynder*, Id. 178

The constitution of Virginia provided that voters must have been twelve months "householders and heads of families." It was held that unmarried persons living with their mother or with younger brothers and sisters, having charge of the family, the father being absent or dead, are to be deemed "housekeepers and heads of families." And it was held further that where a man and woman were living together as husband and wife, it was not competent to inquire into the legality of the marriage, the man then being at the head of a family and a housekeeper: *Draper* v. *Johnson*, 1 Cl. & H. 702.

W. W. THORNTON.

ABSTRACTS OF RECENT DECISIONS.

ENGLISH COURTS OF COMMON LAW AND EQUITY.[1]

SUPREME COURT OF KANSAS.[2]

COURT OF ERRORS AND APPEALS OF MARYLAND.[3]

COURT OF CHANCERY OF NEW JERSEY.[4]

SUPREME COURT OF VERMONT.[5]

SUPREME COURT OF WISCONSIN.[6]

ADMIRALTY.

Collision—Contributory Negligence—Damages.—A dumb barge, by the negligent navigation of those in charge of her, was suffered to come in contact with a schooner moored to a mooring buoy in the river Thames. The schooner had her anchor hanging over her bow with the stock above water, contrary to the Thames bye-laws. The anchor made a hole in the barge, and caused damage to her cargo. But for the improper position of the anchor, neither the barge nor her cargo would have received any damage. In an action of damage by the owners of the barge against the schooner, *Held*, that both vessels were to blame, and that, therefore, the owners of the barge were entitled to half the damage sustained: *The Margaret*, L. R. 6 Prob. Div.

AMENDMENT.

Allowance of on Trial.—Where the original complaint, for work and labor, implied but did not expressly allege a special contract, and the answer set up a special contract, and alleged non-performance, an

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[1] Selected from the last numbers of the Law Reports.

[2] From A. M. F. Randolph, Esq., Reporter; to appear in 26 Kansas Reports.

[3] From J. Shaaff Stockett, Esq., Reporter; to appear in 55 Maryland Reports.

[4] From Hon. John H. Stewart, Reporter; to appear in 34 N. J. Eq. Reports.

[5] From Edwin F. Palmer, Esq., Reporter; to appear in 53 Vermont Reports.

[6] From Hon. O. M. Conover, Reporter; to appear in 52 Wis. Reports.